

SENATE BILL NO. 376

INTRODUCED BY WHEAT

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO PREPARE AN ENVIRONMENTAL IMPACT STATEMENT ON THE PROPOSED DESIGNATION OF THE REACH OF THE GALLATIN RIVER BETWEEN THE YELLOWSTONE NATIONAL PARK BOUNDARY AND THE GALLATIN RIVER'S INTERSECTION WITH SPANISH CREEK AS AN OUTSTANDING RESOURCE WATER; PROVIDING A DATE BY WHICH THE ENVIRONMENTAL IMPACT STATEMENT MUST BE COMPLETED; AMENDING SECTION 75-5-316, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A CONTINGENT TERMINATION DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Findings -- authorization to degrade -- limitation. The legislature finds that Yellowstone national park provides a pristine natural environment for the citizens of the United States and Montana. It is vitally important to maintain the characteristics that Yellowstone national park currently maintains. Because of this pristine condition and the need to keep the waters ~~in~~ FLOWING FROM Yellowstone national park as clean and pure as possible IN CONFORMANCE WITH THE CONSTITUTIONAL PROVISION PROVIDING FOR A CLEAN AND HEALTHFUL ENVIRONMENT, it is very important that an environmental impact statement be completed that provides detailed information about the Gallatin River between the Yellowstone national park boundary and the Gallatin River's intersection with Spanish Creek.

NEW SECTION. Section 2. Environmental analysis and determination of outstanding resource water classification for Gallatin River. (1) (a) Based upon the findings in [section 1], the legislature directs the department to prepare an environmental impact statement on the PROPOSED DESIGNATION OF THE reach of the Gallatin River between the Yellowstone national park boundary and the Gallatin River's intersection with Spanish Creek AS AN OUTSTANDING RESOURCE WATER.

(b) The department shall complete the environmental impact statement and submit it to the board within 1 year of [the effective date of this act].

(c) Once the department has completed the environmental impact statement, the information must be

submitted to the board for review and a decision on whether or not the stretch of the Gallatin River qualifies for classification as an outstanding resource water pursuant to 75-5-316.

(2) The board shall consider the provisions outlined in 75-5-316(3)(c), (3)(d), (4), (7), and (8) when making a determination pursuant to subsection (1)(c) of this section.

Section 3. Section 75-5-316, MCA, is amended to read:

"75-5-316. Outstanding resource water classification -- rules -- criteria -- limitations -- procedure -- definition. (1) ~~As~~ Subject to [sections 1 and 2] and as provided under the provisions of 75-5-301 and this section, the board may adopt rules regarding the classification of waters as outstanding resource waters.

(2) The department may not:

(a) grant an authorization to degrade under 75-5-303 in outstanding resource waters; or

(b) allow a new or increased point source discharge that would result in a permanent change in the water quality of an outstanding resource water.

(3) (a) ~~A~~ Except as provided in [section 2], a person may petition the board for rulemaking to classify state waters as outstanding resource waters. The board shall initially review a petition against the criteria identified in subsection (3)(c) to determine whether the petition contains sufficient credible information for the board to accept the petition.

(b) The board may reject a petition without further review if it determines that the petition does not contain the sufficient credible information required by subsection (3)(a). If the board rejects a petition under this subsection (3)(b), it shall specify in writing the reasons for the rejection and the petition's deficiencies.

(c) ~~The~~ Except as provided in [section 2], the board may not adopt a rule classifying state waters as outstanding resource waters until it accepts a petition and makes a written finding containing the provisions enumerated in subsection (3)(d) that, based on a preponderance of the evidence:

(i) the waters identified in the petition constitute an outstanding resource based on the criteria provided in subsection (4);

(ii) the increased protection under the classification is necessary to protect the outstanding resource identified under subsection (3)(a) because of a finding that the outstanding resource is at risk of having one or more of the criteria provided in subsection (4) compromised as a result of pollution; and

(iii) classification as an outstanding resource water is necessary because of a finding that there is no other effective process available that will achieve the necessary protection.

1 (d) The written finding provided for in subsection (3)(c) must:

2 (i) identify the criteria provided in subsection (4) that the board believes serve as justification for the
3 determination that the water is an outstanding resource;

4 (ii) specifically identify the criteria that are at risk and explain why those criteria are at risk; and

5 (iii) specifically explain why other available processes, including the requirements of 75-5-303, will not
6 achieve the necessary protection.

7 (4) The board shall consider the following criteria in determining whether certain state waters are
8 outstanding resource waters. However, the board may determine that compliance with one or more of these
9 criteria is insufficient to warrant classification of the water as an outstanding resource water. The board shall
10 consider:

11 (a) whether the waters have been designated as wild and scenic;

12 (b) the presence of endangered or threatened species in the waters;

13 (c) the presence of an outstanding recreational fishery in the waters;

14 (d) whether the waters provide the only source of suitable water for a municipality or industry;

15 (e) whether the waters provide the only source of suitable water for domestic water supply; and

16 (f) other factors that indicate outstanding environmental or economic values not specifically mentioned
17 in this subsection (4).

18 (5) Before accepting a petition, the board shall:

19 (a) publish a notice and brief description of the petition in a daily newspaper of general circulation in
20 the area affected and make copies of the proposal available to the public. The cost of publication must be paid
21 by the petitioner.

22 (b) provide for a 30-day written public comment period regarding whether the petition contains sufficient
23 credible information, as provided in subsection (3)(b), prior to the hearing required in subsection (5)(c);

24 (c) hold a public hearing regarding the petition and its contents and allow further written and oral
25 testimony at the hearing;

26 (d) issue a proposed decision, including:

27 (i) the written finding provided for in subsection (3)(c); and

28 (ii) the board's acceptance or rejection of the petition;

29 (e) provide for a 30-day public comment period regarding the board's proposed decision; and

30 (f) issue a final decision on acceptance or rejection of the petition, which must include a response to

1 comments that were received by the board, and make copies of this decision available to the public.

2 (6) (a) After acceptance of a petition, the board shall direct the department to prepare an environmental
3 impact statement, as provided under Title 75, chapter 1, part 2, and this section.

4 (b) Except as provided in [section 2], the following apply with regard to the costs of and payment for an
5 environmental impact statement prepared pursuant to this section:

6 (i) The petitioner is responsible for all of the costs associated with gathering and compiling data and
7 information, and completing the environmental impact statement.

8 (ii) Before the department may initiate work on the environmental impact statement, the petitioner shall
9 pay the estimated cost of completing the environmental impact statement, as determined by the department.

10 (iii) Upon completion of the environmental impact statement, the petitioner shall pay the department any
11 costs that exceeded the estimated cost. If the cost of the environmental impact statement was less than the
12 estimated cost paid by the petitioner, the department shall reimburse the difference to the petitioner.

13 (iv) The board may not grant or deny a petition until full payment for the environmental impact statement
14 has been received by the department.

15 (7) The board shall consult with other relevant state agencies and county governments when reviewing
16 outstanding resource water classification petitions.

17 (8) (a) After completion of an environmental impact statement and consultation with state agencies and
18 local governments, the board may deny an accepted outstanding resource water classification petition or
19 determine that the waters described in [sections 1 and 2] do not qualify for classification as an outstanding
20 resource water if it finds that:

21 (i) the requirements of subsection (3)(c) have not been met; or

22 (ii) based on information available to the board from the environmental impact statement or otherwise,
23 approving the outstanding resource waters classification petition would cause significant adverse environmental,
24 social, or economic impacts.

25 (b) If the board denies the petition or determines that the waters described in [sections 1 and 2] do not
26 qualify for classification as an outstanding resource water, it shall identify its reasons for petition denial or the
27 reasons for determining that the waters described in [sections 1 and 2] do not qualify for classification as an
28 outstanding resource water.

29 (c) If the board grants the petition or determines that the waters described in [sections 1 and 2] do
30 qualify for classification as an outstanding resource water, the board shall initiate rulemaking to classify the

1 waters as outstanding resource waters.

2 (9) A rule classifying state waters as outstanding resource waters under this section may be adopted
3 but is not effective until approved by the legislature.

4 (10) The board may not postpone or deny an application for an authorization to degrade state waters
5 under 75-5-303 based on pending:

6 (a) board action on an outstanding resource water classification petition regarding those waters; or

7 (b) legislative approval of board action designating those waters as outstanding resource waters.

8 (11) As used in this section, "petitioner" means an individual, corporation, partnership, firm, association,
9 or other private or public entity that petitions the board to adopt rules to classify waters as outstanding resource
10 waters."
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12 NEW SECTION. Section 4. Codification instruction. [Sections 1 and 2] are intended to be codified
13 as an integral part of Title 75, chapter 5, part 3, and the provisions of Title 75, chapter 5, part 3, apply to [sections
14 1 and 2].
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16 ~~NEW SECTION. Section 5. Saving clause.~~ [This act] does not affect rights and duties that matured,
17 penalties that were incurred, or proceedings that were begun before [the effective date of this act].
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19 NEW SECTION. Section 5. Effective date. [This act] is effective on passage and approval.
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21 ~~NEW SECTION. Section 7. Applicability.~~ [This act] applies to permit applications received on or after
22 [the effective date of this act].
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24 NEW SECTION. Section 6. Contingent termination. [This act] terminates on the day the that director
25 of the department of environmental quality informs the code commissioner that the board has made a final
26 decision on whether the reach of the Gallatin River between the Yellowstone national park boundary and the
27 Gallatin River's intersection with Spanish Creek qualifies for classification as an outstanding resource water and
28 that any appeals or court cases have been finally resolved.

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